Supreme Court, U.S.
FILED
AUG 4 - 2008
OFFICE OF THE CLERK

No. 08-147

In The

Supreme Court of the United States

MELVIN S. YATES, III,

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

CHARLES E. WAGNER
Silver Spring Centre
P.O. Box 14723
Silver Spring, Maryland 20911
(202) 210-7801

August 4, 2008

Attorney for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

I. WHERE THE DEBT (BOND) IN ISSUE WAS IMPOSED AS A CONDITION FOR THE DEBTOR TO OFFER HIS SERVICES AS A MOVER IN THE DISTRICT OF COLUMBIA, AND WAS THE REASON THE DEBTOR WAS FORCED INTO BANKRUPTCY, DID THE FOURTH CIRCUIT ERR IN FINDING THAT THE DEBT COULD BE REIMPOSED POST-PETITION AS A CONDITION FOR THE DEBTOR TO OFFER HIS SERVICES AS A MOVER BECAUSE IT IS INTENDED TO PAY FUTURE CLAIMS AND PENALTIES?

II. DOES THE ROOKER-FELDMAN DOCTRINE BAR A FEDERAL COURT FROM EXERCISING JURISDICTION OVER A BANKRUPTCY MATTER WHERE A STATE COURT IMPOSES A CIVIL PENALTY AND BOND ON THE DEBTOR'S ESTATE BASED UPON CONDUCT OCCURRING WHOLLY OUTSIDE OF THE STATE IMPOSING THE PENALTY?

III. DOES THE CIVIL PENALTY EXEMPTION UNDER 11 U.S.C. §523(a)(7) APPLY TO PENALTIES IMPOSED ON A DEBTOR BY A D.C. COURT RELATIVE TO CONDUCT ARISING AND OCCURRING WHOLLY WITHIN THE STATES OF MARYLAND AND VIRGINIA?

IV. WHERE THE COURT DEEMS THE BOND OR DEBT IN ISSUE TO BE A PENALTY WITHIN THE MEANING OF 11 U.S.C. §523(a)(7), IS IT

QUESTIONS PRESENTED – Continued

NON-DISCHARGEABLE WHERE NO STATUTE AUTHORIZED THE BOND AND THE PENALTY DID NOT EXIST AT THE TIME THE ALLEGED ACTS SUPPORTING THE BOND OCCURRED, AND IT IS TANTAMOUNT TO A JUDICIAL VIOLATION OF THE EX POST FACTO CLAUSE OF THE CONSTITUTION?

V. WHERE THE DEBTOR IS REQUIRED TO IMMEDIATELY POST THE BOND AS A CONDITION TO WORK, FOR THE PURPOSE OF PAYING FUTURE JUDGMENTS BEFORE ANY CASE OR CONTROVERSY ARISES WITH RESPECT TO THE BOND, IS THE BOND TANTAMOUNT TO A JUDICIALLY IMPOSED BILL OF ATTAINDER WHERE THE BOND IS IMPOSED ON THE DEBTOR AND NO ONE ELSE?

VI. WHERE THE PARTIES DISMISSED WITH PREJUDICE ALL §523(a)(2) CLAIMS RELATED TO FRAUD IN THE TWO ADVERSARY PROCEEDINGS IN THE BANKRUPTCY COURT, MAY THE DISTRICT OF COLUMBIA RELY UPON THE SAME FRAUD CLAIMS FOR THE PURPOSE OF REIMPOSING THE SAME BOND THAT DROVE THE DEBTOR INTO BANKRUPTCY IN THE FIRST PLACE?

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	1
STATUTES AND OTHER PROVISIONS INVOLVED	2
INTRODUCTION	3
STATEMENT	4
A. Statutory Background	8
B. Factual and Procedural Background	9
I. Factual Predicate	9
II. Post-Petition Background	11
III. Post-Trial Background	13
IV. The Decision Below	15
REASONS FOR GRANTING THE WRIT	17
I. CERTIORARI SHOULD BE GRANTED BECAUSE THE DECISION BELOW BINDS THE D.C. COURT OF APPEALS IN ITS RESOLUTION OF IMPORTANT FEDERAL ISSUES INVOLVING THE BANKRUPTCY LAWS THAT ARE CONTRARY TO THE SETTLED DECISIONS OF THIS COURT	17
II. THE FOURTH CIRCUIT ABDICATED ITS RESPONSIBILITY TO DECIDE KEY BANKRUPTCY ISSUES IN RELIANCE ON ROOKER-FELDMAN AND REFERRED THE ISSUES FOR DECISION BY THE LOCAL COURT	21

TABLE OF CONTENTS – Continued

Page

III. CERTIORARI SHOULD BE ALSO GRANTED BECAUSE THE FOURTH CIRCUIT HAS DECIDED CONSTITUTIONAL ISSUES IN A MANNER WHICH CONFLICTS WITH SETTLED DECISIONS OF THIS COURT 23

CONCLUSION 26

APPENDICES

Appendix A April 21, 2008, Decision from the U.S. Court of Appeals For the Fourth Circuit Affirming judgment of District Court .....App. 1

Appendix B April 21, 2008, Order from the U.S. Court of Appeals For the Fourth Circuit Affirming judgment of District Court .....App. 14

Appendix C February 13, 2007, Decision of U.S. District Court.....App. 16

Appendix D May 20, 2008, Order from the U.S. Court of Appeals For the Fourth Circuit denying Appellant's Petition for Rehearing, Rehearing en banc .....App. 25

TABLE OF AUTHORITIES

Page

CASES

Archer v. Warner, 538 U.S. 314 (2003).....3, 7, 17

BMW of North America v. Gore, 517 U.S. 559 (1996).....3, 6, 22

Bouie v. City of Columbia, 378 U.S. 347 (1964).....24

Calder v. Bull, 3 Dall. 386 (1798).....3, 24, 25

Central Virginia Community College v. Katz, 546 U.S. 356 (2006).....22

Davani v. Virginia Dep't of Trans., 434 F.3d 712 (4th Cir. 2006).....6

D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983).....6

District of Columbia v. M.Y. Enterprises, Inc. et al., Civil Action No. 02-926.....10

Exxon Oil v. Saudi Basic Indus. Corp., 544 U.S. 280 (2005).....3, 6, 21, 22

FCC v. NextWave Personal Communication, Inc., 537 U.S. 293 (2003).....3, 4, 9, 18, 19, 20

Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074 (9th Cir. 2000).....6, 21

In re Dunbar, 235 B.R. 465 (Bankr. 9th Cir. 1999).....8

Lance v. Dennis, 546 U.S. 459 (2006).....6, 22

Melvin S. Yates v. District of Columbia, 05CV29.....7

Melvin S. Yates v. District of Columbia, 06CV96.....7

TABLE OF AUTHORITIES – Continued

Page

NextWave Personal Communications v. Federal Communications Comm., 254 F.3d 130 (D.C. Cir. 2001) 9

Ohio v. Kovacs, 469 U.S. 274 (1985) 19, 20

Perez v. Campbell, 402 U.S. 637 (1971) 3, 4, 8, 18, 20

Rooker v. Fid. Trust Co., 263 U.S. 413 (1923) 6

Tennessee Student Assistance Corp. v. Hood, 541 U.S. 540 (2004) 3, 6, 22

United States v. Brown, 381 U.S. 437 (1965) 24, 25

STATUTES

11 U.S.C. §101(5) 4, 18

11 U.S.C. §101(12) 4

11 U.S.C. §523(a)(2) 7, 11, 12, 13, 17, 18, 20

11 U.S.C. §523(a)(7) 16, 22, 25

11 U.S.C. §524(a)(1) 2, 8, 18, 23

11 U.S.C. §524(a)(2) 2, 8, 13, 18, 23

11 U.S.C. §525 ..... 2, 8, 9, 20

28 U.S.C. §1254(1) 1

28 D.C. Code §3909 ..... 10, 24, 25

PETITION FOR WRIT OF CERTIORARI

Melvin S. Yates, III, respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit (hereinafter "Fourth Circuit") in this case.

OPINIONS BELOW

The unpublished decision of the Fourth Circuit is reprinted at Appendix ("App.") App.1. The Order of the Fourth Circuit is set forth at App.14. The Fourth Circuit's denial of the Petition for rehearing and rehearing en banc is reprinted at App.25. The final judgment and unpublished decision of the U.S. District Court for the District of Maryland (hereinafter "District Court") is set forth at App.16.

JURISDICTION

The Fourth Circuit entered judgment on April 21, 2008. That court denied the petition for rehearing, rehearing en banc, on May 20, 2008. App.25. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTES AND OTHER PROVISIONS INVOLVED

The Fifth Amendment of the Constitution of the United States provides in pertinent part:

> "No person shall be . . . deprived of . . . property without Due Process of Law."

11 U.S.C. 524 Effect of Discharge, provides in pertinent part:

> (a) A discharge in a case under this title –
>
> > (1) voids any judgment at anytime obtained, to the extent that such Is a determination of the personal liability of the debtor with respect to any debt discharged under section 727 . . . ;
> >
> > (2) operates as an injunction against the commencement or continuation of the action, the employment of process, or an act, to collect, recover or offset and such debt as a personal liability of the debtor . . . ;

11 U.S.C. 525 Protection against discriminatory treatment, provides in pertinent part:

> (a) Except as provided . . . , a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that

is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act.

INTRODUCTION

This case involves the same issues conclusively settled in: 1) *FCC v. NextWave Personal Communication, Inc.*, 537 U.S. 293 (2003), regarding whether a regulatory condition is a dischargeable debt, 2) *Perez v. Campbell*, 402 U.S. 637, 648 (1971), holding that the debtor is entitled to a fresh start, 3) *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 540 (2004), regarding the exclusive control of the debtor's estate by the bankruptcy court, 4) *Exxon Oil v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283-84 (2005), regarding the limits of the *Rooker-Feldman* doctrine; 5) *Archer v. Warner*, 538 U.S. 314 (2003) whether issues of fraud should be determined first in the bankruptcy court, 6) *BMW of North America v. Gore*, 517 U.S. 559, 560 (1996), whether a state may punish for conduct that occurred in another state, and 7) *Calder v. Bull*, 3 Dall. 386, 390 (1798), regarding whether punishment may be increased over the statutory penalty in existence at the time of the offense or punishment imposed without due process of law.

STATEMENT

The assailed decision is another episode where an appellate court completely ignores settled precedent of this Court and denies a litigant rights guaranteed by the Constitution and the laws enacted by Congress. Accordingly, the Petitioner (hereinafter "Yates") seeks a writ of certiorari pursuant to Rule 10(c) because the Fourth Circuit "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Review is also sought under Rule 10(a) because the Fourth Circuit "has so far departed from the accepted and usual course of judicial proceedings, [and has] sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." Finally, review is sought under 10(a) because the decision below is in conflict with the decisions of another federal appeals court.

This case revisits concerns decided in *FCC v. NextWave Personal Communication, Inc.* as to whether §525's new start includes discharges of any prepetition debt that was imposed as a regulatory condition. The regulatory condition here is particularly onerous because it is the same regulatory debt that triggered the debtor's bankruptcy. The Fourth Circuit questioned whether the bond was a valid debt within the meaning of 11 U.S.C. §§101(5) & (12) because Yates could avoid it by simply going into another line of work. (App.8). This definition of a debt clashes with the holding in *NextWave,* and is in direct contravention of the fresh start holding of *Perez*

v. Campbell. Because the preliminary injunction issued in this case barred the use of prepetition claims to reimpose the regulatory condition (i.e., bond), the Fourth Circuit approved the reimposition of the bond (debt), because it will be used to pay future penalties and claims, despite the fact that it had the same pre-petition factual predicate as the initial bond, i.e., the year 2000 claims. (App.9-10). The reimposed debt constitutes a Due Process Clause violation of the Constitution since Yates must secure the bond immediately, in order to work in the moving industry, despite the nonexistence of any case or controversy, or lack of notice and opportunity to be heard as to liability on the future claims. Since there is no statutory basis for the bond, the debt is a **judicially imposed** Due Process violation of the Ex Post Facto Clause of the Constitution, as well as a **judicially imposed** Bill of Attainder since the bond has never been imposed on anyone else and requires Yates to fund a bond to pay future penalties and claims, without a trial as to liability. The Fourth Circuit sidestepped these important issues in its first footnote, wherein it declared Yates' motion to strike as moot in light of its disposition of the case.[1]

---

[1] Yates contended that the District's assertion, that the above constitutional issues were being raised in a Rule 28J letter for the first time on appeal, was false and intentionally made to mislead the court. Yates cited references to his briefs in the Fourth Circuit and the District Court where he claimed the bond was a due process violation.

The Fourth Circuit eschewed any jurisdiction over the constitutional claims under *Rooker-Feldman*,[2] despite its own decision in *Davani v. Virginia Dep't of Trans.*, 434 F.3d 712, 718 (4th Cir. 2006). The decision clashes with decisions from the Ninth Circuit which hold that *Rooker-Feldman* does not apply in the bankruptcy context. *See, e.g., Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1078-84 (9th Cir. 2000). In *Exxon Oil v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283-84 (2005), this Court observed that the various courts of appeals have misapplied *Rooker-Feldman* in ways that were not intended. *See also Lance v. Dennis*, 546 U.S. 459, 462-63 (2006). This case involves a novel application of *Rooker-Feldman* deference relative to constitutional claims, because the Fourth Circuit used *Rooker-Feldman* to avoid jurisdiction and simply deferred to a state high court as to whether a state court may impose a civil penalty on a discharged claim, arising wholly within another state, despite the "against the world" holding in *Tennessee Student Assistance Corp. v. Hood* and *BMW of North America v. Gore*. The Fourth Circuit allowed the D.C. high court to also decide whether the regulatory condition may be extended to business done wholly in Maryland and Virginia in contravention of *BMW*.

---

[2] *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

The bond was initially imposed on M.Y. Enterprises, Inc. (hereinafter "MYE") and Yates in 2002, as a condition for doing business in D.C. It was reimposed after the trial based on the pre-petition 11 U.S.C. §523(a)(2) claims that formed the basis of the action. However, this reimposition occurred after the parties "***dismiss with prejudice***" all 11 U.S.C. §523(a)(2) fraud claims in the bankruptcy court. This Court held in *Archer v. Warner* that Congress wanted all fraud claims to be decided first in the bankruptcy court. *Archer v. Warner*, *supra*, at 321. Thus, the issue is raised as to whether the District of Columbia (hereinafter "District") may continue to use the same §523(a)(2) (fraud) claims it dismissed with prejudice in the bankruptcy court, to reimpose the same regulatory condition that drove the debtor into bankruptcy in the first place.

The D.C. Court of Appeals has held in abeyance its decisions in the cases before it pending the resolution of the federal bankruptcy issues.[3] By deferring to the local high court regarding constitutional issues, along with its erroneous decisions regarding bankruptcy law, it is likely that the D.C. court will decide its case contrary to the decisions of this Court.

---

[3] *Melvin S. Yates v. District of Columbia*, 05CV29 and 06-CV96, argued, **April 12, 2007**. The latter case (06CV96) directly involves whether the regulatory condition in this case survived the discharge order, while the earlier case involves the bankruptcy injunction issued by Judge Keir.

A. Statutory Background

Two statutes control the issues in this case: 11 U.S.C. §§524, 525. Both statutes are intended to allow a debtor a fresh start after Chapter 7 bankruptcy. Section 524(a) was derived from the former Bankruptcy Act §14f, which was added in 1970, to correct a perceived problem arising from the old status of a bankruptcy discharge, which merely created an affirmative defense which could be waived if not affirmatively pleaded. By declaring that "any judgment theretofore or thereafter obtained in any other court is null and void as a determination of the personal liability of the bankrupt" as to the discharged debts, Congress made it possible for a debtor to ignore a creditor's subsequent action in a non-bankruptcy court. *In re Dunbar*, 235 B.R. 465, 473 (Bankr. 9th Cir. 1999). In changing the law, Congress believed that requiring the debtor to raise the discharge as an affirmative defense often resulted in the benefit's loss where the debtor relied to his or her detriment on the discharge, could not hire a lawyer, or was not properly served, etc. *See* H. Rep. No. 91-1502, 91st Cong., 2d Sess. 1-2 (1970). The purpose of §524's injunction was to promote the fresh start policy of the Bankruptcy Code by protecting a debtor against actions brought on pre-petition debts. *Perez v. Campbell*, *supra*, 402 U.S. at 648.

In recognition of the fact that often the ability to engage in a particular line of work depended upon the issuance of a license or permit by a governmental entity, §525(a) was enacted to bar a governmental

agency from denying a license or permit because of the discharged debt. The fact that there may be a salutary motive for denying the license or permit does not allow the governmental agency to ignore §525. *NextWave Personal Communications v. Federal Communications Comm.*, 254 F.3d 130, 153 (D.C. Cir. 2001); affirmed *FCC v. NextWave Personal Communication, Inc.*, 537 U.S. 293 (2003). The District and its court are governmental units which barred Yates in 2002 from engaging in the household goods (hereinafter "HHG") moving industry until he posted a $100,000 bond. This bond drove him into bankruptcy. Using the same year 2000 claims, the bond was reimposed in 2004 at the level of $75,000 (to be raised to $100,000 when the bond RES drops to $50,000) to pay future claims.

B. FACTUAL AND PROCEDURAL BACKGROUND

I. Factual Predicate

In 1998, Yates, a resident of the State of Maryland, incorporated MYE, a federally licensed HHG motor common carrier, in the State of Maryland. In 2001, the District launched parallel criminal and civil enforcement investigations of MYE, on the basis of year ***2000*** complaints related to MYE's D.C. operations. Relying on 9 complaints, the District filed a 9-count criminal misdemeanor information against the Yates and MYE, charging that MYE had failed to register with the Mayor, and did not include its

business address in its moving contracts. Pursuant to a plea agreement, Yates pled guilty to five counts of the information, and also agreed, *inter alia*, to return $4,195.00 in transportation charges, as restitution, to six shippers.

On February 11, 2002, the District filed in D.C. Superior Court,[4] a civil enforcement action against MYE and Yates under 28 D.C. Code §3909, the D.C. consumer protection statute, based upon the same year 2000 acts in the criminal case. The District asked the court to require MYE and Yates to post a **$250,000** surety bond ***as a condition for offering their services in the District.*** On February 26, 2002, Judge Gregory Mize, preliminarily enjoined MYE and Yates from offering moving services anywhere (***interstate*** or locally), unless they first posted a surety bond of $100,000 ***as a condition for doing business in the District of Columbia.***

Unable to post the bond, on March 21, 2002, MYE filed for Chapter 7 bankruptcy protection in the U.S. Bankruptcy Court for the District of Maryland. The District then had Yates held in contempt for not posting the bond while working for World Wide Moving & Storage, Inc. ("World Wide"), a federally licensed HHG motor carrier. At no time did the District seek to add World Wide as a party to the proceedings. Unable to post the bond, and facing

---

[4] *District of Columbia v. M.Y. Enterprises, Inc. et al.*, Civil Action No. 02-926.

imprisonment for contempt, on March 19, 2003, Yates filed for Chapter 7 bankruptcy protection in the U.S. Bankruptcy Court in Greenbelt, Maryland in case No. 03-13176.

II. Post-Petition Background

On June 25, 2003, the District filed an Adversary Complaint (Case #03-1218) to determine the dischargeability of awards imposed as a part of the disposition of the criminal case, and **the monetary awards it was seeking in the ongoing civil enforcement case**. Yates followed with his own adversary complaint (Case #03-1244). In paragraph 2 of the District's adversary complaint, the District objected "pursuant to ***11 U.S.C. §523(a)(2)*** to the discharge of ***any monetary awards imposed in the civil proceedings as a result of the Defendant's false pretenses and false representations***." (Emphasis added). On August 27, 2003, Judge Duncan Keir of the U.S. Bankruptcy Court announced that he would grant Yates' motion to preliminarily enjoin the District from seeking to Yates to fund any bond to pay claims set forth in 02cv926, if the claims arose before March 19, 2003, until their dischargeability had been adjudicated. On October 6, 2003, a signed order was issued memorializing the August 27, 2003, decision. Judge Keir's injunction included key two provisos: 1) the District could not require Yates to make assets available to fund the bond based upon pre-petition (March 19, 2003) claims, and 2) the District could not condition any employment opportunity or license of

Yates on the obtaining of the bond if based upon pre-petition claims, until their dischargeability had been determined. The District sought to stay the bankruptcy proceedings until the conclusion of the D.C. case, however, Yates opposed this stay. On January 30, 2004, Judge Keir denied the District's request for a stay. Unable to uncover any post-petition claims against Yates, on March 12, 2004, the District asked the Superior Court to allow it to use pre-petition claims for its permanent injunction. The District also asked the court to permit it to use 2000 era HHG claims ***arising wholly in the States of Maryland and Virginia***.

After Judge Keir denied the District's request for a stay, on March 23, 2004, the District obtained Yates' consent to a ***stipulated dismissal with prejudice*** in ***both*** adversary proceedings of all fraud claims under 11 U.S.C. §523(a)(2). Thereafter, the District decided to use the dismissed 11 U.S.C. §523(a)(2) claims as proof in its case. Yates filed a motion in limine to bar such evidence in the upcoming trial because the claims had been **dismissed with prejudice** in the bankruptcy court. Yates argued that the stipulated dismissal with prejudice converted Judge Keir's preliminary injunction into a permanent injunction with respect to all §523(a)(2) claims.

On May 20, 2004, the Superior Court denied Yates' motion in limine and held that the dismissal with prejudice of §523(a)(2) claims did not bar the District from offering such evidence for a permanent injunction and civil penalties. On June 16, 2004,

Yates asked Judge Keir to bar the use of §523(a)(2) evidence in the D.C. trial since the dismissed §523(a)(2) claims were barred by 11 U.S.C. §524(a)(2). On August 6, 2004, Judge Keir denied the requested relief and opined that "this Court did not determine the 523(a)(2). There was a dismissal by consent. And it has not determined the issue of fraud did or did not occur." Judge Keir opined that "the matter that was precluded by the withdrawal with prejudice of the 523(a)(2) count was is the debt alleged to exist non-dischargeable because of fraud. . . . And that is a different matter than does such a debt exists."

> "True, under collateral estoppel or law of the case, whichever you prefer, the District ***is precluded from ever seeking a determination that any such debt is nondischargeable as fraud***. But it is not precluded from litigating the existence of or attempting to litigate the existence of fraudulent acts in the Superior Court."

(Emphasis supplied).

III. Post-Trial Background

During the D.C. trial, the District offered the testimony of the witnesses whose year 2000 claims predated the petition in bankruptcy. Additionally, the District offered the year 2000 claims of Marvin Johnson and Doressa Lucas, **residents of the States of Virginia and Maryland**. The jury returned its

verdict on September 22, 2004, holding Yates liable for MYE's conduct.[5] Yates appealed Judge Keir's decision to the U.S. District Court for Maryland. On November 8, 2004, Judge Roger Titus affirmed Judge Keir's decision. In doing so, Judge Titus opined that, **while he considered a dismissal with prejudice to be a decision on the merits**, he would not issue an injunction **because the post-trial motions in the D.C. case had not been decided**. Thus, it was premature to guess what, if any decision, would be rendered on the post-trial motions. However, **Judge Titus echoed Judge Keir's view that the District was forever barred from seeking a determination that a debt was non-dischargeable for fraud**. This decision was affirmed by the Fourth Circuit on July 27, 2005, in case #04-2504, **on the basis of Judge Titus' decision**. The issue of whether a dismissal with prejudice of claims in bankruptcy court forever bars the dismissed claims was never decided.

On December 23, 2004, a final judgment on the jury verdict was entered in the D.C. case. The D.C. court permanently enjoined Yates and a mythical company, known only as "***a Yates company***," from conducting HHG operations without satisfying the same bond requirement that triggered Yates' bankruptcy. Yates was responsible for obtaining the bond even though any "Yates company" would be liable for

---

[5] Yates was barred from offering any documents or calling any witnesses at the trial as a discovery sanction based upon non-party World Wide's alleged failure to cooperate in discovery.

claims arising from its operations, and Yates may not be involved in the conduct subject to a lawsuit. The injunction required Yates to obtain a $75,000 surety bond to satisfy any judgments against "a Yates company" based upon false or misleading representations of material fact. The District could levy against the bond to pay any penalties in any future enforcement action. The bond RES would be raised to ***$100,000*** when the RES was exhausted to $50,000. In addition to the $5,000 in civil penalties imposed relative to the District shippers' claims, the D.C. court imposed $2,000 in civil penalties based upon pre-petition claims **arising wholly within the States of Maryland and Virginia**, and made the bond requirement applicable to any HHG operations by Yates wholly within those portions of Maryland and Virginia that were included in the Washington, D.C. commercial zone.

IV. The Decisions Below

When Yates was again held in contempt for working without obtaining the new bond, he returned to the bankruptcy court. On November 3, 2006, Judge Thomas Catliota of the U.S. Bankruptcy Court granted the District's summary judgment motion on the issue of whether the reimposition of the bond violated §525. On February 13, 2007, Judge Roger Titus affirmed Judge Catliota's decision. (App.16) The Fourth Circuit affirmed Judge Titus' decision. (App.1).

The Fourth Circuit opined that the bond was not a debt within the meaning of the bankruptcy act because Yates could avoid it by simply getting into another line of work. App.8. Moreover, in its view, the reimposition of the bond did not violate the discharge order because it was intended to pay future claims. The Fourth Circuit distinguished the reimposed bond, from its predecessor, by opining that it was intended to pay future claims, while the earlier bond covered both past and future claims. (App.9-10).

Relying on the *Rooker-Feldman* doctrine, the Fourth Circuit opined that it lacked jurisdiction to decide whether the D.C. Court could impose civil penalties on discharged claims arising wholly in the States of Maryland and Virginia. (App.11-12). The Fourth Circuit also declined to address the constitutional issues raised by the lower court's finding that the bond constituted a fine or penalty under 11 U.S.C. §523(a)(7). Yates had argued in his briefs that if the bond were a fine within the meaning of §523(a)(7), as opined by Judge Titus (App.24), it constituted a violation of the Due Process Clause because it was intended to pay future fines and judgments before any case or controversy arose. Moreover, the bond was also a **judicial due process violation** of the Ex Post Facto Clause because no statute authorized the bond, and was also akin to a **judicia**l bill of attainder because Yates was being punished without trial before any case or controversy arose. Finally, the Fourth Circuit sidestepped the question of whether a claim dismissed with prejudice in the bankruptcy

court could be relitigated elsewhere, ruling that the issue had been decided earlier in 04-2504. (App.12). In this regard, the Fourth Circuit misconstrued Yates argument as challenging the admission of the fraud evidence in the D.C. case, when his challenge was to the reimposition of the bond based upon claims of fraud. Moreover, the earlier appeal to the Fourth Circuit was affirmed on the basis of Judge Titus' decision, i.e., he declined to issue an injunction because post-trial motions in the D.C. case had not been decided.

REASONS FOR GRANTING THE WRIT

I. CERTIORARI SHOULD BE GRANTED BECAUSE THE DECISION BELOW BINDS THE D.C. COURT OF APPEALS WITH ITS ERRONEOUS RESOLUTION OF IMPORTANT FEDERAL ISSUES THAT ARE CONTRARY TO THE SETTLED DECISIONS OF THIS COURT.

This Court has held that, with respect to bankruptcy issues, the federal courts preempt state courts, and a federal court may even look behind a state court decision to determine whether a debtor has been denied the complete relief available under federal law. *Archer v. Warner, supra*, 538 U.S. at 320. When the §523(a)(2) claims were dismissed with prejudice, Judge Keir's preliminary injunction became a permanent injunction with respect to those claims. A Fourth Circuit decision, that wrongfully

misinterprets federal law, and overturns a permanent injunction which is final, binds the D.C. high court inasmuch as the D.C. court is not free to ignore the federal court decision, even if clearly wrong, with respect to the issues decided. This is a cause for alarm. Moreover, the D.C. Court of Appeals has not ruled in its cases in order not to violate §524, by allowing the federal courts to decide the important bankruptcy issues. As the Court is aware, §524 stands as an injunction against the continuation of litigation in violation of the discharge order. In the decision below, the Fourth Circuit opined that the bond was not truly a debt within the meaning of 11 U.S.C. §101(5) because Yates could simply avoid it by going into another line of work. (App.8). However, this view guts the fresh start holding of *Perez v. Campbell*, by carving out a new definition of debt based upon whether the debtor has options. The Fourth Circuit concluded that the regulatory condition here should survive the discharge order since it was intended to satisfy future claims. (App.9-10). The flaw in this reasoning is the fact that the bond must be funded immediately irrespective of the existence of future claims. It is noteworthy that the courts below never discussed *NextWave* or applied its holding, and the Fourth Circuit only referred to *NextWave* to observe that it contained a definition of debt. (App.8). However, Judge Keir's preliminary injunction specifically relied upon *NextWave*, and it became permanent, with respect to §523(a)(2) issues, when the parties dismissed with prejudice their §523(a)(2) claims. In *NextWave*, the payments for the

FCC license involved future installments. This circumstance prompted Justice Breyer to observe that there was no reason to excuse NextWave from future obligations that it had agreed to incur. Yates' obligation to fund this bond must be satisfied before Yates is allowed to work in the HHG industry irrespective of whether any future claims materialize.

The Fourth Circuit opined that the bond was appropriate because a bankruptcy discharge is unavailable to wrongdoers. (App.10-11). **The bond does not redress past wrongs**, and Yates has not been found liable for future wrongdoing. Although if Yates had violated the District's HHG regulations, his license to operate in the District of Columbia could have been revoked, as the Fourth Circuit noted. However, no one has ever contended that the acts in issue violated the District's HHG regulations. Moreover, ***there is no statutory or regulatory basis for this bond***. In *Ohio v. Kovacs*, 469 U.S. 274, 283, 284 (1985), this Court said that future violations of the law were punishable and subjected to criminal and civil penalties, which were not dischargeable. Similarly, Yates is subject to civil and criminal consequences in the event he violates the DC HHG regulations or any other D.C. statute. This Court opined in *NextWave*, that the motive of the governmental unit in reimposing the debt is immaterial, stating:

> "Some may think (and the opponents of §525 undoubtedly thought) that there ought to be an exception for [reimposed debt] that have a

> valid regulatory purpose. Besides the fact that such an exception would consume the rule, it flies in the face of the fact that where Congress has intended to provide regulatory exception to provisions of the Bankruptcy Code, it has done so clearly and expressly, ***rather than be a device so subtle as denominating a motive as a cause***." (Emphasis supplied) *Id.* at 302.

In this regard, *NextWave* reaffirms a similar holding in *Perez v. Campbell*, which observed that the salutary purpose of legislation which frustrates the fresh start of the debtor is immaterial in deciding whether the debtor is entitled to a fresh start. *Perez v. Campbell*, *supra*, at 651-52. Finally, the Fourth Circuit sidestepped the issue of whether the prior dismissal with prejudice of all §523(a)(2) claims barred the use of such claims to reimpose the bond. No court has addressed Yates' claim that the District could not seek reimposition of the bond on §523(a)(2) claims that it had dismissed with prejudice in the bankruptcy court, and this Court has said that any decision as to whether fraud occurred must be decided first in the bankruptcy court. *Archer v. Warner, supra*, at 320. ***The so-called §523(a)(2) wrongdoing that the Fourth Circuit opined supported the reimposition of the bond was the type of claim dismissed by the parties with prejudice*** and could not serve as a predicate for the debt.

The decisions below require the D.C. high court to disregard §§524 and 525 because the decisions

below are res judicata and entitled to collateral estoppel effect before the D.C. court as to all related issues before it. We submit that the petition for a writ of certiorari should be granted because the Fourth Circuit "has so far departed from the accepted and usual course of judicial proceedings, [and has] sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power," inasmuch as it has bound the highest court of a jurisdiction to its erroneous interpretation of the law.

II. THE FOURTH CIRCUIT ABDICATED ITS RESPONSIBILITY TO DECIDE KEY BANKRUPTCY ISSUES IN RELIANCE ON ROOKER-FELDMAN AND REFERRED THE ISSUES FOR DECISION BY THE LOCAL COURT.

The Fourth Circuit sidestepped important constitutional issues by opining it lacked jurisdiction to decide them because of the *Rooker-Feldman* Doctrine. This Court has never used *Rooker-Feldman* as a basis for dismissing a claim for want of jurisdiction. *Exxon Oil v. Saudi Basic Indus. Corp., supra,* 544 U.S. at 287. Moreover, this decision clashes with decisions from the Ninth Circuit which hold that *Rooker-Feldman* does not apply in the bankruptcy context. *See, e.g., Gruntz v. County of Los Angeles, supra.* The Fourth Circuit deferred to the D.C. Court of Appeals on whether a D.C. court could impose civil penalties based upon conduct occurring wholly within the States of Maryland and Virginia, and whether a D.C.

court could extend the bond to those portions of Maryland and Virginia which fell within the D.C. Commercial zone. As noted above, the misapplication of the *Rooker-Feldman* doctrine by the federal appellate courts has been criticized by this Court, and does not apply where the federal court has acquired jurisdiction over the subject matter in litigation. *Exxon Oil, supra*, at 283-284; *see also Lance v. Dennis, supra*.

In *Tennessee Students*, this Court opined that the bankruptcy court had exclusive control over the debtor's estate, "against the world." *Tennessee Student Assistance Corp., supra,* at 447. Consequently, a federal court, having such exclusive control, has a duty to protect the debtor's estate from unconstitutional raids by state officials. The sovereign immunity of the states from being treated like ordinary creditors has been abrogated by the bankruptcy clause. *Central Virginia Community College v. Katz*, 546 U.S. 356, 126 S.Ct. 990, 1004-05 (2006). Apart from the issue of whether a D.C. court can punish a Maryland resident for conduct occurring wholly within the States of Maryland and Virginia, the question arises as to whether §523(a)(7) exemption applies to civil penalties imposed on a debtor for acts occurring wholly within another state. We submit that such an important bankruptcy issue cannot be left for resolution by a state court, since the bankruptcy court has exclusive control over the rest of the debtor's estate, from which the penalties will be paid. In *BMW of North America v. Gore*, 517 U.S. 559, 560 (1996), this

Court held that a state may not punish conduct that occurred wholly outside of the state imposing the penalties. The personal claims of the Maryland and Virginia shippers were discharged by the discharge order in this case. The D.C. Court imposed civil penalties of $2,000 for the conduct occurring wholly within the States of Maryland and Virginia relative to MYE's operations in those states. The Fourth Circuit opined that the *Rooker-Feldman* doctrine barred it from asserting jurisdiction to consider the merits of Yates' claim that the imposition of civil penalties for conduct wholly outside of the District of Columbia violated the Constitution. (App.12). In conjunction with the civil penalties, the D.C. court extended the coverage of the bond to include those portions of the States of Maryland and Virginia which fell within the commercial zone of Washington, D.C. Accordingly, the debt discharged under 11 U.S.C. §524 was extended to bar a fresh start by a Maryland debtor in the Maryland and Virginia suburbs unless he first satisfied the bond requirement. We submit that the Fourth Circuit erred in deferring to the D.C. high court on these important issues.

III. CERTIORARI SHOULD BE ALSO GRANTED BECAUSE THE FOURTH CIRCUIT IGNORED CONSTITUTIONAL CLAIMS REGARDING THE DEBT.

The Fourth Circuit did not address Yates' claim that the bond was a judicial violation of the Due Process Clause. In footnote one, the Fourth Circuit

skirted the issue by stating that Yates' motion to strike the 28J letter of the District, which falsely stated that Yates was raising the Due Process issue on appeal for the first time, was moot based upon the disposition it was making in the case.

At the time the alleged acts occurred (and as of the date of this filing), the D.C. Code did not authorize the imposition of the bond in this case, as a condition for doing business. Nor did 28 D.C. Code §3909 include such a remedy amongst the listed relief the attorney general could seek under the D.C. consumer protection act. Thus, we have a judicial violation of the Ex Post Facto Clause of the Constitution. Cf. *Calder v. Bull, supra,* 3 Dall. at 390. The imposition of a bond as a condition to work, that the debtor cannot secure, is a form of banishment, and the statute in this case does not authorize banishment from a business. This Court in *United States v. Brown*, 381 U.S. 437, 448 (1965) opined that disqualification of the pursuit of a lawful vocation was a form of punishment. Thus, the punishment here, total preclusion from a lawful occupation, constitutes a judicial due process violation of the Ex Post Facto Clause of the Constitution. This Court has said that "[Ii]f a state legislature is barred by the Ex Post Facto Clause from passing such a law, it must follow that a State Supreme Court is barred by the ***Due Process Clause*** from achieving precisely the same result by judicial construction." (Emphasis supplied). *Bouie v. City of Columbia*, 378 U.S. 347, 354-55 (1964). The remedies' provisions of the statute in this case (28

D.C. Code §3909(a) and (b)), provide that the Attorney General may seek an injunction and "recover restitution" for property lost as a result of the wrongful practice, civil penalties, attorney fees and costs. Judge Titus opined that the bond was a §523(a)(7) fine and therefore nondischargeable. (App.24). Since the fine (bond) was not authorized by statute at the time of the alleged wrongdoing, it is a ***judicially imposed*** Ex Post Facto violation of the Constitution. *See, Calder v. Bull*, 3 Dall. 386, 390 (1798). A court order requiring a debtor to prepay future fines and penalties, without a trial on the merits, violates the Due Process Clause of the Constitution, since no case or controversy presently exists with respect to the bond, and the debtor has no way to argue that he is not liable on the underlying claim. Moreover, such a bond has never been imposed on anyone else as a condition for doing business in the District, and is not authorized by the HHG regulations. The judicial imposition of such a unique bond, to fund future liability for civil penalties and judgments which have yet to occur, without trial, and prior to any case or controversy giving rise to the fines and claims the bond is intended to pay, is a judicially created bill of attainder (*See Brown, supra*, 441-42). We submit that the Fourth Circuit erred in not deciding the issue and deferring to the local high court to resolve the controversy.

CONCLUSION

For the forgoing reasons, Petitioner respectfully submits that the Court should grant this petition for a Writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit, or in the alternative vacate the judgment below and remand the case for reconsideration in light of this Court's precedent.

Respectfully submitted,

CHARLES E. WAGNER, ESQ.
Silver Spring Centre
P.O. Box 14723
Silver Spring, Maryland 20911
(202) 210-7801
Attorney for Petitioner

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-1148

In Re: MELVIN STANLEY YATES, II,

Debtor.

MELVIN STANLEY YATES, II,

Plaintiff-Appellant,

v.

THE DISTRICT OF COLUMBIA,

Defendant-Appellee.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Roger W. Titus, District Judge. (8:06-cv-03199-RWT; BK-03-13176; AP-06-01305)

Argued: February 1, 2008 Decided: April 21, 2008

Before MICHAEL and SHEDD, Circuit Judges, and Liam O'GRADY, United States District Judge for the Eastern District of Virginia, sitting by designation.

Affirmed by unpublished per curiam opinion.

ARGUED: Charles Elliot Wagner, Washington, D.C., for Appellant. James Creighton McKay, Jr., OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA, Washington, D.C., for Appellee. **ON BRIEF:** Linda Singer, Attorney General for the District of Columbia, Todd S. Kim, Solicitor General, Edward E. Schwab, Deputy Solicitor General, OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

This appeal arises from an adversary proceeding in bankruptcy court. In that proceeding Melvin Yates sought to enjoin the District of Columbia (the D.C. government or District) from enforcing one aspect of a permanent injunction it obtained in D.C. Superior Court. The portion of the injunction at issue prohibits Yates from operating a moving and storage business in the District without first obtaining a $75,000 surety bond for the protection of Yates's future customers. The bond obligation was imposed on Yates as a result of a jury finding that he had violated the D.C.

Consumer Protection and Procedures Act while previously operating his business. Yates argues that a bankruptcy discharge he received in 2003 bars the D.C. government from enforcing the surety bond obligation. The bankruptcy court rejected Yates's position, and the district court affirmed. Because we agree that Yates's discharge does not bar the D.C. government from enforcing the surety bond obligation, we affirm.[1]

I.

Beginning sometime prior to 2001 Yates operated a household goods moving and storage business, M.Y. Enterprises, Inc. (MYE), in the District. In June 2001 the D.C. government brought a series of misdemeanor criminal charges against Yates related to his operation of the business. Yates pled guilty to several of these charges in October 2001, for which he received jail time and was ordered to pay $4,195 in restitution and $250 in costs.

In February 2002 the District filed a civil action in D.C. Superior Court against Yates and MYE based on the company's alleged violations of the D.C. Consumer Protection and Procedures Act. On February 26, 2002, the Superior Court issued a preliminary injunction that, among other things, enjoined Yates

---

[1] After oral argument in this case Yates filed a motion to strike a Rule 28(j) letter submitted by the D.C. government. In light of our disposition of the case, we deny this motion as moot.

and MYE from future violations of the Act and required them to obtain a $100,000 surety bond for the benefit of any consumer harmed by their misconduct while "engaged in the business of transporting, moving, warehousing, or storing goods." J.A. 87-88. MYE filed for bankruptcy in March 2002 and stopped operating shortly thereafter.

A year later, on March 19, 2003, Yates filed for bankruptcy in the Bankruptcy Court for the District of Maryland, which granted his discharge in June 2003. The D.C. government then filed an adversary proceeding seeking a determination that certain debts owed by Yates were non-dischargeable under 11 U.S.C. § 523(a)(2), which excepts from discharge debts obtained by fraud, and § 523(a)(7), which excepts from discharge penalties and fines owed to a governmental unit. Yates, in turn, sought to enjoin the D.C. government from continuing its prosecution of the Superior Court civil action and from enforcing the surety bond obligation imposed in that action. In October 2003, the bankruptcy court entered a preliminary injunction that barred the D.C. government

> from conditioning any license or employment opportunity of Mr. Yates based upon his payment or nonpayment or on the posting of the aforementioned surety bond for the benefit of any consumer injured, as defined in the [Superior Court's] Preliminary Injunction, *to the extent such payment, nonpayment, or bond requirement relates to any claims arising prior to March 19, 2003,* which have been discharged by the discharge order entered

> herein unless and until any and all of such claims are determined herein to be nondischargeable.

J.A. 103 (emphasis added). The bankruptcy court's injunction further stated that the D.C. government was not "enjoined from continuing to prosecute" the civil action in Superior Court or from "enforcing the [Superior Court's] Preliminary Injunction . . . as it relate[s] to the posting of a surety bond for the benefit of any consumer injured . . . in regard to a claim against the debtor that has arisen, or may arise, subsequent to March 19, 2003." J.A. 103-104.

In March 2004 the D.C. government entered a stipulation with Yates under which it agreed to dismiss with prejudice its claim in the bankruptcy proceeding that Yates's debts were non-dischargeable under the fraud exception, § 523(a)(2). The stipulation also provided that the government would dismiss without prejudice its claim under the government penalties exception, § 523(a)(7).

Yates then filed a motion in limine in the D.C. Superior Court civil action arguing that the dismissal of the § 523(a)(2) claims in the bankruptcy court precluded the D.C. government from introducing any evidence of fraud in the Superior Court action. The Superior Court denied this motion in May 2004. J.A. 124-25.

Next, in a July 2004 order the bankruptcy court denied Yates's request to permanently enjoin the Superior Court action and instead allowed that action to go forward subject to the terms of the October 2003

preliminary injunction. The bankruptcy court also stated that whether the relief sought in the civil action was non-dischargeable could be determined after any such relief was actually awarded.

Yates then moved in the bankruptcy court for an injunction barring the introduction of fraud evidence in the D.C. Superior Court action. The bankruptcy court denied the motion, reasoning that the dismissal of the § 523(a)(2) claims did not constitute a determination that no fraud existed, but instead only precluded the D.C. government from arguing that any debt owed by Yates was non-dischargeable under § 523(a)(2). Both the district court and Fourth Circuit affirmed. *Yates v. District of Columbia,* 139 Fed. Appx. 584 (4th Cir. 2005) (unpublished).

The D.C. Superior Court held a trial in the civil action in November 2004. At trial the D.C. government introduced evidence to show that Yates had engaged in fraudulent activity while operating MYE. This evidence stemmed from incidents that occurred prior to Yates's bankruptcy discharge in 2003, and some of the incidents occurred in Virginia and Maryland rather than in the District. The jury found that on numerous occasions Yates and his company violated the D.C. Consumer Protection and Procedures Act through misrepresentations of material fact. In December 2004 the court awarded the D.C. government a $7,000 civil penalty as well as three forms of equitable relief, which applied against Yates and any moving company under his management or control. First, the court enjoined Yates from engaging in an

enumerated set of deceptive business practices, such as making misleading statements to consumers. Second, the court required Yates to make affirmative disclosures to future customers through a prescribed form, which was to be signed by the customers and returned to the D.C. Attorney General. Third, the court required that Yates either refrain from managing or controlling a company in the moving business or obtain, prior to engaging in such business, a $75,000 surety bond. The order stated that the terms of the surety bond must allow execution by either the D.C. government or any injured consumer upon proof that Yates, after the date of the judgment, made material misrepresentations to consumers.

In January 2006 the D.C. Superior Court held Yates in contempt for violating the December 2004 injunction. The court found that Yates was managing and controlling WorldWide Moving and Storage, Inc., a company engaged in the moving business. The court further found that Yates and WorldWide had neither made the affirmative disclosures nor obtained the surety bond required by the injunction.

Yates then filed this adversary proceeding alleging that his bankruptcy discharge barred the D.C. government from enforcing the $75,000 surety bond obligation imposed by the D.C. Superior Court. The bankruptcy court rejected all of the arguments Yates advanced in support of his position, and the district court affirmed. Yates now appeals.

II.

Yates's primary contention on appeal is that 11 U.S.C. § 524(a) barred the Superior Court from imposing the $75,000 surety bond obligation in November 2004. That statute bars any entity from seeking to collect a debt that has previously been discharged in bankruptcy. 11 U.S.C. § 524(a). According to Yates, the $100,000 bond obligation imposed in February 2002 qualifies as a "debt" within the meaning of the Bankruptcy Code and, thus, was discharged when his bankruptcy discharge was granted in June 2003. In Yates's view, the $75,000 bond obligation imposed in November 2004 violates § 524(a) because it is tantamount to a reimposition of the (discharged) $100,000 bond obligation imposed in February 2002.

This argument lacks merit. As an initial matter, we are not certain that the initial surety bond obligation qualifies as a "debt" within the meaning of the Bankruptcy Code, given that Yates is not required to secure the bond if he refrains from engaging in the moving business. *See* 11 U.S.C. § 101(12) (defining "debt"); *see also FCC v. NextWave Personal Communications, Inc.*, 537 U.S. 293, 302-04 (2003) (interpreting definition of "debt"). But we need not answer that difficult question here because the surety bond obligation imposed by the December 2004 permanent injunction differs in important ways from the obligation imposed by the preliminary injunction. That fact alone is a sufficient reason to reject Yates's argument that the D.C. Government has run afoul of § 524(a) by impermissibly seeking to reimpose a discharged debt.

The key difference between the two surety bond obligations is that the November 2004 obligation is narrowly focused on protecting consumers from future misconduct, whereas the February 2002 obligation is broader in that it seeks to provide compensation for past injuries as well. The Superior Court's November 2004 injunction makes clear that an injured party (or the D.C. government) may execute on the bond based on proof that Yates engaged in business misconduct "after the effective date of [the court's] Order." J.A. 183. The February 2002 bond obligation had no such restriction and was structured in a way that allowed for compensation to past victims of Yates's misconduct. In fact, the bankruptcy court has previously recognized the retrospective aspect of the February 2002 surety bond obligation when, in October 2003, it enjoined the Superior Court from enforcing the bond obligation with respect to payment for claims arising prior to the date of Yates's discharge.

This key distinction demonstrates that the November 2004 surety bond obligation is not simply a reimposition of the prior February 2002 obligation. In other words, even if we assume the February 2002 obligation was a debt that was discharged in Yates's bankruptcy, § 524(a) barred the D.C. government only from reimposing a similar obligation geared to compensating victims of Yates's past misconduct. We see no warrant for interpreting § 524(a) in a way that prohibits the D.C. government from seeking to

impose a prospective surety bond obligation designed as protection for future consumers.

Yates repeatedly invokes the bankruptcy code's "fresh start" policy to support the argument that his discharge should prevent the D.C. government from enforcing the surety bond obligation against him. *See Marrama v. Citizens Bank of Mass.*, 127 S. Ct. 1105, 1107 (2007) ("The principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'" (quoting *Grogan v. Garner*, 498 U.S. 279, 286, 287 (1991))). But the "fresh start" policy does not imply that a discharge in bankruptcy allows a debtor to be excused from all consequences of his past misconduct. Indeed, the bankruptcy code's "fresh start" principle is limited by the concept that "discharge in bankruptcy is not intended to be a haven for wrongdoers." *U.S. Dept. of Hous. & Urban Dev. v. Cost Control Mktg. & Sales Mgmt. of Va., Inc.*, 64 F.3d 920, 927 (4th Cir. 1995). Yates's pre-bankruptcy misconduct in operating his business landed him in serious trouble and resulted in both civil and criminal judgments against him. Had the D.C. government sought the more drastic remedy of permanently enjoining Yates from operating a moving business within its borders, the bankruptcy code surely would have provided Yates no solace. Likewise, nothing in the bankruptcy code bars the D.C.

government from imposing the lesser sanction at issue in this case.[2]

III.

Yates next argues that the D.C. Superior Court erred in the civil action by allowing two of Yates's former customers to testify regarding moves that occurred outside of the District. Yates argues that these extra-jurisdictional transactions can not be relevant in determining whether Yates violated the D.C. Consumer Protection and Procedures Act and that basing a penalty on the admission of such evidence would violate the federal constitution. The D.C. Superior Court ruled that the testimony was admissible, and Yates has appealed to the D.C. Court of Appeals. *See Yates v. District of Columbia,* Nos. 05-CV-29 & 06-CV-96 (D.C. argued April 12, 2007).

We conclude that our consideration of Yates's arguments, which were first raised in the federal courts after the D.C. Superior Court denied his motion to exclude the extra-jurisdictional evidence, is foreclosed by the *Rooker-Feldman* doctrine. That doctrine generally prohibits a party who loses on an

---

[2] Yates also argues that imposition of the surety bond obligation violates the Ex Post Facto Clause of the Constitution and other provisions of federal law. We decline to address these issues, which may be properly addressed in the D.C. court proceedings. *See Yates v. District of Columbia,* 445 F.3d 422 (D.C. Cir. 2006) (holding that *Younger* abstention barred federal court consideration of similar arguments made by Yates).

issue in state court from later seeking what in substance would be appellate review in the federal courts. *See Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005). Yates argues that there is an exception to the doctrine that allows a federal bankruptcy court to enjoin a state court action that would violate the § 524(a) statutory injunction prohibiting actions to seek payment for a discharged debt. *See In re Gruntz*, 202 F.3d 1074, 1084 (9th Cir. 2000) ("*Rooker-Feldman* does not allow a state court to interfere with the core administrative functions of an operative bankruptcy."). Even assuming that such an exception exists, it does not apply here. As we concluded in part II, the D.C. government did not violate § 524(a) by seeking (and obtaining) a permanent injunction that imposed a prospective surety bond obligation on Yates. Therefore, we lack jurisdiction to review the merits of the D.C. Superior Court's evidentiary ruling.

IV.

Finally, Yates renews his argument that the bankruptcy court should have barred the D.C. Superior Court from admitting any evidence of fraud in the civil action against him. This argument is based on the theory that the D.C. government's dismissal with prejudice of its § 523(a)(2) claims in the bankruptcy court precludes the government from arguing that Yates engaged in any fraudulent activities. Yates is barred from relitigating this issue, which our court has previously decided. *See Yates v. District of*

Columbia, 139 Fed. Appx. 584 (4th Cir. 2005) (unpublished).

* * *

For the reasons stated above, the judgment of the district court is

AFFIRMED.

FILED: April 21, 2008

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-1148
(BK-03-13176)
(8:06-cv-03199-RWT)
(AP-06-01305)

In Re: MELVIN STANLEY YATES, II,

Debtor

MELVIN STANLEY YATES, II,

Plaintiff-Appellant

v.

THE DISTRICT OF COLUMBIA,

Defendant-Appellee

JUDGMENT

In accordance with the decision of this Court, the judgment of the District Court is affirmed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

MELVIN STANLEY YATES, II	*	
	*	
Appellant/Debtor	*	Case No.
v.	*	06cv3199 RWT
DISTRICT OF COLUMBIA	*	
	*	
Appellee	*	

MEMORANDUM OPINION

(Filed Feb. 13, 2007)

This Court is very familiar with the factual background of this case, having held hearings in related cases on two occasions.[1] As such, pursuant to the Federal Rules of Bankruptcy Procedure, Rule 8012, this Court finds "the facts and legal arguments

---

[1] On November 10, 2004, the Court held a hearing on Appellant's bankruptcy appeal in *Melvin Stanly [sic] Yates, II v. District of Columbia,* Civil Case Number RWT 04-2845. After hearing argument, the Court affirmed the decision of the bankruptcy court, and the Fourth Circuit affirmed. *See Melvin Stanley Yates, II v. District of Columbia,* Case No. 04-2504 (filed July 27, 2005).

On November 6, 2006, the Court held a consolidated hearing on pending motions in *Melvin Stanley Yates, III [sic] v. District of Columbia,* Civil Case Number RWT 06-995, and *Melvin Stanley Yates, II v. District of Columbia,* Civil Case Number RWT 06-1113. In light of the opinion and order issued on November 3, 2006 by Bankruptcy Judge Thomas J. Catliota, the Court dismissed both actions.

are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument," and therefore, a hearing is unnecessary. For the reasons articulated below, this Court will affirm the decision of the Bankruptcy Court by separate order.

BACKGROUND

Judge Catliota provided a detailed summary of the history of the protracted litigation between the parties in the opinion which is the subject of this appeal, Memorandum of Decision ("Decision"), at 3-9, and this Court will not repeat it here. It will only be necessary to summarize the procedural history of the latest appeal now pending before this Court.

On March 16, 2006, Melvin Stanley Yates, II, Appellant/Debtor, filed in the Bankruptcy Court an emergency motion to reopen his Chapter 7 bankruptcy case, and a Complaint for Permanent Injunction. In his complaint, Appellant sought to permanently enjoin the District of Columbia, Appellee, from pursuing contempt proceedings, collecting civil penalties, or enforcing an injunction entered in Civil Action No. 962-02, in the Superior Court of the District of Columbia ("the Civil Action") based upon pre-petition claims against Appellant, and also sought damages against Appellee for its alleged violations of a preliminary injunction entered by the Bankruptcy

Court, and violations of 11 U.S.C. §§ 525(a) and 524(a)(2).[2] The next day, Appellant filed a motion for a temporary restraining order and a preliminary injunction against Appellee. On April 17, 2006, the Bankruptcy Court denied the motion for temporary restraining order and preliminary injunction.[3] On November 3, 2006, the Bankruptcy Court granted Appellee's Motion for Summary Judgment. On November 6, 2007, Appellant noted his appeal to this Court.

ANALYSIS

This Court will not set aside the Bankruptcy Court's findings of fact unless they are "clearly erroneous," *see* Fed. R. Bankr. Pro. 8013, but reviews conclusions of law *de novo*. *See In re Bryson Properties, XVIII,* 961 F.2d 496, 499 (4th Cir. 1992).

This Court will address the issues in this appeal based on the individual statutes and Bankruptcy Court orders that Appellant alleges Appellee has violated.

---

[2] Appellant added a claim relating to Appellee's alleged violation of 11 U.S.C. § 524(a)(2) in his amended complaint, filed March 21, 2006.

[3] Appellant's appeal from this denial was previously before the undersigned. *See supra,* note 1.

11 U.S.C. § 525(a)

The Bankruptcy Court held that the District did not violate 11 U.S.C. § 525(a) because "(1) the District did not seek or obtain the imposition of the surety bond and the injunction 'solely because' the Debtor was a debtor in bankruptcy, was insolvent or failed to pay a dischargeable debt; and (2) the surety bond obligation is a nondischargeable debt." *See* Decision, at 11.

Section 525(a) of Title 11 provides, in pertinent part:

> [A] governmental unit may not deny, revoke, suspend, or refuse to renew a license . . . [to] a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act . . . ***solely because*** such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(emphasis added).

Based on the record before it, this Court agrees with the Bankruptcy Court's conclusion that Appellee sought to impose the obligation to post a surety bond against Appellant as a result of his fraudulent activities in the District of Columbia, and not solely

because of the bankruptcy proceedings. After a trial in the Civil Action, a jury specifically found that Appellant had mislead customers. *See* Appellant's Brief, Exh. 8, at 48. Therefore, under the plain language of 11 U.S.C. § 525(a), this Court cannot find that Appellee refused Appellant a license "solely because" he previously filed for bankruptcy, was insolvent, or failed to pay dischargeable debts.[4] As such, this Court will affirm the Bankruptcy Court on this ground.

2003 Injunction of the Bankruptcy Court

Appellant asserts that Appellee is precluded from requiring any bond based on the fraudulent acts of Appellant, as such a bond would relate to discharged pre-petition claims, in violation of the 2003 Injunction of the Bankruptcy Court. That injunction provides, in pertinent part:

> FURTHER ORDERED: That the District of Columbia be and is hereby enjoined from conditioning any license or employment opportunity of Mr. Yates based upon his payment or nonpayment or on the posting of the

[4] This Court finds no fault with the Bankruptcy Court's alternative finding, that the surety bond obligation was not a dischargeable debt. However, this Court's holding that Appellee's requirement of a surety was not a result of an improper discriminatory motive, in violation of 11 U.S.C. § 525(a), obviates the need for discussion of the Bankruptcy Court's alternative conclusion.

> aforementioned surety bond for the benefit of any consumer injured, as defined in the Preliminary Injunction, to the extent such payment, nonpayment, ***or bond requirement relates to any claims arising prior to March 19, 2003, which have been discharged by the discharge order*** entered herein unless and until any and all of such claims are determined herein to be non-dischargeable[.]

See Order Issuing Preliminary Injunction as to Certain Aspects of Litigation Pending in the Superior Court of the District of Columbia, at 2; Appeal Exh H8, at 86. (emphasis added).

The parties agree that the surety bond currently required by Appellee could not be used to satisfy pre-petition claims. Appellant asserts, however, that Appellee, having dismissed with prejudice its claims pursuant to 11 U.S.C. § 523(a),[5] cannot use fraud as the basis for any surety bond, even one prospective in nature.

This argument is very similar to one previously raised by Appellant. Prior to the trial in the Superior Court Civil Action, Appellant sought to have all

---

[5] *See* 11 U.S.C. § 523(a) ("A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt – . . . (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition. . . . ")

evidence of fraud relating to pre-petition claims excluded. The Superior Court concluded the evidence was admissible, as did the Bankruptcy Court, this Court, and the Court of Appeals for the Fourth Circuit. *See* Decision, at 7 n.9. Indeed, as noted in Judge Catliota's most recent opinion, the Bankruptcy Court then held:

> the withdrawal with prejudice of the Section 523(a)(2) nondischargeability count by D.C. in its adversary proceeding was preclusive only of whether any alleged debt of Plaintiff in favor of D.C. was nondischargeable pursuant to Section 523(a)(2); ***but not as to the underlying existence of fraud.*** . . . [U]nder res judicata theories, D.C. is precluded from ever seeking a determination that any such debt is nondischargeable under Section 523(a)(2). However, the court ruled that ***D.C. was not precluded from litigating the existence of, or attempting to litigate the existence of fraudulent acts*** in the Superior Court in connection with the Civil Litigation claims that may be in the nature of Section 523(a)(7) penalties.

See Order Denying Plaintiff's Motion for Injunction Pending Appeal, at p. 5-6; Appeal Exh. I9, at 89 (emphasis added).

In the instant case, this Court, as did the Bankruptcy Court, finds that Appellee's requirement of a surety bond did not violate the 2003 Injunction of the Bankruptcy Court, as the plain language of that injunction only prohibited the requirement of a bond

to satisfy "claims arising prior to March 19, 2003." Appellee's dismissal of claims pursuant to 11 U.S.C. § 523(a)(2) did not forever shield Appellant from any consequences of his fraudulent activities; it merely waived any claim Appellee may have had as to the nondischargeability of those particular debts. The requirement of a surety bond was designed to protect consumers from damages caused by any future, not past, fraudulent activities of the Appellant. As such, this Court will affirm the Bankruptcy Court on this ground.[6]

11 U.S.C. §§ 524(a)(2), 523(a)(7)

Appellant argues that the requirement of a surety bond violates 11 U.S.C. § 524(a)(2). That section provides: "A discharge in a case under this title – . . . (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived. . . . " 11 U.S.C. § 524(a)(2).

This Court notes that pursuant to 11 U.S.C. § 523: "(a) A discharge under section 727, 1141,

[6] In its opinion, the Bankruptcy Court also addressed Appellant's apparent claims as to particular fraudulent acts in 2000. *See* Decision, at 22-23. This Court sees no reason why these particular acts would compel a different conclusion as to the legality of the surety bond under 11 U.S.C. §§ 524, 525, or the 2003 Injunction of the Bankruptcy Court.

1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt – . . . (7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss." 11 U.S.C.A. § 523(a)(7). In the Superior Court Civil Action, Appellant was found liable for fraudulent acts in relation to his business. In conjunction with this finding, civil penalties, a surety bond, and any fines imposed as a result of Appellant's failure to secure such a bond, fall squarely within the exception outlined in 11 U.S.C.A. § 523(a)(7).[7] As such, this Court will affirm the bankruptcy Court on this ground.

CONCLUSION

For the reasons articulated above, this Court will affirm the decision of the Bankruptcy Court and dismiss Appellant's appeal, by separate order.

DATE: 2/13/07

/s/
ROGER W. TITUS
UNITED STATES DISTRICT JUDGE

[7] To the extent that Appellant argues that Appellee's dismissal of its 11 U.S.C. § 523(a)(2) claims somehow affects the application of 11 U.S.C. § 523(a)(7), this Court finds that contention is without merit. *See also supra*, p. 5.

FILED: May 20, 2008

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-1148
(BK-03-13176)
(8:06-cv-03199-RWT)
(AP-06-01305)

In Re: MELVIN STANLEY YATES, II,

Debtor

MELVIN STANLEY YATES, II,

Plaintiff-Appellant

v.

THE DISTRICT OF COLUMBIA,

Defendant-Appellee

ORDER

The Court denies the petition for rehearing and rehearing en banc. No poll was requested on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Michael, Judge Shedd, and Judge O'Grady, United States District Judge.

For the Court

/s/ Patricia S. Connor, Clerk